RECENT CASES.

ADMIRALTY — TORTS — RECOGNITION OF STATE LAW AS TO LIABILITY OF COUNTY. — The ship of the libelants was injured by the negligence of the servants of the respondent county in operating a drawbridge over a navigable stream. By the common law of the state in which the accident occurred a governmental agency was not liable for the negligence of its servants. *Held*, that the county is liable under the general maritime law. *O'Keefe* v. *Staples Coal Co.*, 201 Fed. 131 (Dist. Ct., D. Mass.).

A suit in the state court under the facts of the principal case would have brought the opposite decision. *French* v. *Boston*, 129 Mass. 592. The same anomaly of rights varying with the court appears in the defense of contributory negligence. *Cf. The Max Morris*, 137 U. S. 1, 11 Sup. Ct. 29; *Garoni* v. *Compagnie Nationale de Navigation*, 131 N. Y. 614, 14 N. Y. Supp. 797. The federal government was given exclusive jurisdiction of admiralty in the interest of uniform laws. See *The Roanoke*, 189 U. S. 185, 198, 23 Sup. Ct. 491, 494; *The Chusan*, 5 Fed. Cas., No. 2,717. But this does not prevent admiralty, if it chooses, from recognizing affirmative rights given under state statutes. So admiralty has recognized a state statute allowing an action for death by wrongful act. *The Harrisburg*, 119 U. S. 199, 7 Sup. Ct. 140; *The Hamilton*, 207 U. S. 398, 28 Sup. Ct. 133. It has also recognized a state statute giving a lien for supplies in the home port although the rights of priority were held to be governed by admiralty law. *The Edith*, 94 U. S. 518; *Peyroux* v. *Howard*, 7 Pet. (U. S.) 324. In other cases the court has rejected state statutes as inconsistent with the principles of admiralty. *The Roanoke*, 189 U. S. 185, 23 Sup. Ct. 491; *The Key City*, 14 Wall. (U. S.) 653. And the principal case follows a prior decision in refusing to recognize the state common law. *Workman* v. *New York*, 179 U. S. 552, 21 Sup. Ct. 212. Whether or not a particular state statute will be given effect in a court of admiralty sitting in the state seems to depend on no more definite principle than the character of the statute. But it seems unlikely that admiralty courts will adopt local common-law rules without legislation by Congress.

BAILMENTS — NATURE OF BAILMENTS — LIABILITY OF RESTAURANT KEEPER FOR GUEST'S OVERCOAT. — The plaintiff, a guest in the defendant's restaurant, hung his overcoat on a hook provided for the purpose a few feet from his table. When the plaintiff prepared to depart the coat had disappeared. *Held*, that the defendant is liable. *Wentworth* v. *Riggs*, 139 N. Y. Supp. 1082 (Sup. Ct., App. Div.).

The restaurant keeper, unless there is a bailment, owes merely a duty of reasonable supervision for guests' belongings, founded on the usual obligation to protect invitees from foreseeable dangers. *Simpson* v. *Rourke*, 13 N. Y. Misc. 230, 34 N. Y. Supp. 11. But if the defendant is a bailee, as the court in the principal case considered him, he must take due care to protect the particular chattel. To establish a bailment, possession must be consciously relinquished by the bailor and assumed by the bailee. For, except where the relationship is imposed by law, as in the case of finders, the obligation is based on an express or implied agreement. See *Mariner* v. *Smith*, 5 Heisk. (Tenn.) 203, 206; *First National Bank* v. *Ocean National Bank*, 60 N. Y. 278, 284. In the absence of an actual delivery, the discussion in the principal case seems to be mainly as to whether an invitation to or aquiescence in a bailment by the restaurant keeper may be implied. *Cf. Bunnell* v. *Stern*, 122 N. Y. 539, 25 N. E. 910. A more serious objection to the existence of a bailment, however, would seem to be the difficulty in implying the consent of the guest to yielding possession.

In the absence of a special agreement, a bailee, since he has exclusive possession, is entitled to move the object bailed. *Atlantic Coast Line R. Co.* v. *Baker*, 118 Ga. 809, 45 S. E. 673. The ordinary restaurant guest who hangs his overcoat a few feet from his table is probably unwilling that it be carried away and locked up till called for.

BANKRUPTCY — DISCHARGE — JUDGMENT FOR ALIMONY. — A judgment was obtained in New York founded upon a North Dakota judgment for alimony. Thereafter, the person against whom the judgment was rendered became bankrupt and obtained a discharge. *Held*, that the judgment is nevertheless enforceable. *Matter of Estate of Williams*, 49 N. Y. L. J. 171 (N. Y., Ct. App.).

For a criticism of the contrary holding in the same case in a court below, see 23 HARV. L. REV. 146.

BANKRUPTCY — DISSOLUTION OF LIENS — LIENS "VOID" BY SECTION 67f MERELY VOIDABLE BY TRUSTEE. — A creditor obtained a judgment lien on the property of an insolvent within four months of his bankruptcy. Section 67f of the Bankruptcy Act provides that such liens shall be deemed void and that the property affected thereby shall pass to the trustee. The trustee elected not to take the property. *Held*, that the lien may be enforced notwithstanding the bankrupt's discharge. *McCarty* v. *Light*, 139 N. Y. Supp. 853 (Sup. Ct., App. Div.).

Section 67 f of the Bankruptcy Act was obviously enacted for the benefit of the trustee as the representative of all the creditors and not for the benefit of the bankrupt. Consequently, it is well settled as a matter of construction that the liens referred to in that section are only voidable at the option of the trustee. Hence neither the bankrupt himself nor outsiders can set up the automatic operation of the section. *Rochester Lumber Co.* v. *Locke*, 72 N. H. 22, 54 Atl. 705; *Frazee* v. *Nelson*, 179 Mass. 456, 61 N. E. 40; *Hutchins* v. *Cantu*, 66 S. W. 138 (Tex.). For the same reason, the section has been construed as not applying to liens on exempt property. *McKenney* v. *Cheney*, 118 Ga. 387, 45 S. E. 433. But see *In re Tune*, 115 Fed. 906. A further analogy is found in dealing with the Statute of Elizabeth. Notwithstanding its broad language declaring all transfers of property in fraud of creditors void, it is firmly established that such transfers are merely voidable at the option of those persons for whose benefit the statute was enacted. *Burgett's Lessee* v. *Burgett*, 1 Ham. (1 Oh.) 469; *Doster* v. *Manistee National Bank*, 67 Ark. 325, 55 S. W. 137. The same principle is followed in construing conditions in leases. *Smith* v. *Sinclair*, 59 N. J. L. 84, 34 Atl. 943; *Bowman* v. *Foot*, 29 Conn. 331. *Cf. Trask* v. *Wheeler*, 7 Allen (Mass.) 109.

CARRIERS — LIMITATION OF LIABILITY — EFFECT OF DEVIATION BY CARRIER UPON CONTRACT FOR AGREED VALUATION. — The plaintiff shipped livestock over the defendant railroad under a special contract, excusing the defendant from liability as an insurer under certain circumstances and providing for an agreed valuation of the stock per head in case of loss. The railroad carried the shipment by a different route from that ordered. Part of the livestock was destroyed. *Held*, that the plaintiff may recover the proven, instead of the agreed, value. *Atlantic Coast Line R. Co.* v. *Hinely-Stephens Co.*, 60 So. 749 (Fla.).

By special contract a carrier may obtain exemptions from his usual liability as insurer. *Grace* v. *Adams*, 100 Mass. 505; *Anchor Line* v. *Dater*, 68 Ill. 369. Also by an agreed valuation of the goods shipped he may fix the maximum recovery of the shipper in case of loss. *Hart* v. *Pennsylvania R.*, 112 U. S. 331, 5 Sup. Ct. 151; *Graves* v. *Lake Shore & M. S. R.*, 137 Mass. 33. *Contra*, *Moulton* v. *St. Paul, M. & M. Ry. Co.*, 31 Minn. 85, 16 N. W. 497. That a de-